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1 UNITED STATES DISTRICT COURT
2
3 NORTHERN DISTRICT OF CALIFORNIA
4
5 SAN FRANCISCO DIVISION

6 **IN RE GOOGLE PLAY STORE**
7 **ANTITRUST LITIGATION**

Case No. 3:21-md-02981-JD

8 THIS DOCUMENT RELATES TO:

9 **STIPULATION AND ~~[PROPOSED]~~**
10 **ORDER REGARDING EXPERT**
11 **STIPULATION**

12 *Epic Games Inc. v. Google LLC et al.*, Case
13 No. 3:20-cv-05671-JD

14 *In re Google Play Consumer Antitrust*
15 *Litigation*, Case No. 3:20-cv-05761-JD

Judge: Hon. James Donato

16 *In re Google Play Developer Antitrust*
17 *Litigation*, Case No. 3:20-cv-05792-JD
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1 Upon the agreement of the parties in the above-captioned actions (the “Parties”, and each
 2 individually, a “Party”) regarding the scope of disclosures and discovery relating to all experts
 3 (testifying and non-testifying), the Court enters this Order:

4 1. Except as specifically set forth and/or modified herein, the Parties shall comply
 5 with all of the requirements of Federal Rule of Civil Procedure 26 with regard to the scope of
 6 disclosures and discovery relating to all experts.

7 2. Any expert retained in connection with the above-captioned actions shall be
 8 provided with a copy of this Order.

9 3. The Parties agree that the only disclosures relating to retained experts (testifying
 10 and non-testifying) and consultants in the above-captioned actions shall be those pertaining only
 11 to testifying experts, resulting from and as required by Federal Rule of Civil Procedure 26(a)(2)
 12 as modified or limited by this Order.

13 4. For purposes both of the disclosure requirement agreed at Paragraph 3 above and
 14 also for purposes of discovery relating to experts, the term “considered” as used in Federal Rule
 15 of Civil Procedure 26(a)(2)(B)(ii) and 26(b)(4)(C)(ii) shall be interpreted as “relied upon.”

16 5. Unless relied upon by a testifying expert as a basis for his or her opinion(s)
 17 expressed in final expert reports, declarations or other testimony in this litigation, the following
 18 categories of information, whether in documents, communications, or other forms, shall not be
 19 discoverable:

- 20 a. The content of communications between a testifying expert and his or her
 21 staff;
- 22 b. The content of communications between, on the one hand, a testifying
 23 expert and his or her staff and, on the other hand, any other non-testifying
 24 experts or consultants and their staff;
- 25 c. The content of communications between, on the one hand, a testifying
 26 expert and his or her staff, and, on the other hand, the Party or Parties who
 27 retained that expert;

- d. The content of communications between, on the one hand, a testifying expert and his or her staff, and, on the other hand, any other testifying experts and their staff retained by the same Party or Parties; and
- e. Work product prepared by or at the direction of a testifying expert, other than a testifying expert's final report or declaration submitted in this litigation (including, but not limited to, notes, outlines, memoranda, research and analyses), as well as communications regarding that work product with that testifying expert's staff or any other non-testifying experts or consultants.

6. The Parties shall not be obliged to include documents encompassed within the scope of Paragraph 5 above on any privilege log.

7. Within three calendar days of service of an expert report, declaration, or affidavit, the Party or Parties submitting such report, declaration, or affidavit shall produce all the data, documents, and other information relied upon by the expert witness as a basis for the expert witness's opinion(s). Data, documents, and other information relied upon by an expert witness shall include, but are not limited to, all data, spreadsheets (including formulas embedded in spreadsheet cells, if applicable), statistical analyses, regression analyses, input and output files for each program or computer code, programs, computer code, and other sources, reports, schedules, literature, or websites. A detailed readme file that explains (1) each of the source input files and Bates-numbered data files to be included in each specific folder of the backup production and (2) the specific order to run each program or computer code shall also be produced. Bates numbered documents previously produced by any Party and documents that are publicly available need not be produced, but a list of any such documents identified by Bates number (and, for publicly available documents, the location where such materials can be located) shall be included with the information relied upon by the expert. Neither Party needs to produce programs or software that (i) are publicly available at reasonable cost and within a reasonable time and (ii) are not practicable to copy, as long as the Party or Parties offering the expert's

1 opinion provide timely and reasonable access and instructions for purposes of replication or
2 analysis of disclosed results. Documents that are publicly available must be identified but need
3 not be produced absent specific request. Documents and data should be produced electronically
4 (via email or storage device such as hard drive or thumb drive) where appropriate.

5 8. The production of information relied upon shall be sufficient for the opposing
6 Parties and experts to reconstruct and verify the expert's work, calculations, and analyses, and
7 shall include any instructions and guides necessary to assist in that effort. The producing Party
8 also shall promptly answer reasonable technical inquiries about data, programs, or code prior to
9 the expert's deposition.

10 9. Without prejudice to a party's rights under Federal Rule of Civil Procedure
11 26(b)(4)(D)(i) and (ii), all work product prepared by or at the direction of an expert or consultant
12 who is not expected to be called as a witness at trial (including, but not limited to, notes, outlines,
13 memoranda, reports, drafts, research and analyses), as well as communications by or among such
14 non-testifying experts or consultants or their staffs, shall not be discoverable through any means.

15 10. Nothing in this Order shall limit or waive any Party's rights to object for any
16 reason to the admission of any opposing Party's expert testimony into evidence or to the
17 qualification of any person to serve as an expert witness.

18 11. The requirements of Federal Rule of Civil Procedure 26(b)(4)(E) shall not apply in
19 this litigation.

20 12. This Order may be amended only by a subsequent written stipulation among the
21 Parties or upon order of the Court.

1 **IT IS SO STIPULATED.**

2 Dated: July 9, 2021

CRAVATH, SWAINE & MOORE LLP

Christine Varney (*pro hac vice*)

Katherine B. Forrest (*pro hac vice*)

Darin P. McAtee (*pro hac vice*)

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Paul J. Riehle (SBN 115199)

Respectfully submitted,

By: /s/ Yonatan Even

Yonatan Even

Counsel for Plaintiff Epic Games, Inc.

15 Dated: July 9, 2021

BARTLIT BECK LLP

Karma M. Giulianelli

KAPLAN FOX & KILSHEIMER LLP

Hae Sung Nam

Respectfully submitted,

By: /s/ Karma M. Giulianelli

Karma M. Giulianelli

*Co-Lead Counsel for the Proposed Class in
In re Google Play Consumer Antitrust
Litigation*

1 Dated: July 9, 2021

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Elizabeth C. Pritzker

2 Respectfully submitted,

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4 By: /s/ Elizabeth C. Pritzker
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5 *Liaison Counsel for the Proposed Class in*
6 *In re Google Play Consumer Antitrust*
7 *Litigation*

8 Dated: July 9, 2021

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18 *Developer Class and Attorneys for Plaintiff*
19 *Pure Sweat Basketball*

1 Dated: July 9, 2021

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5 Respectfully submitted,

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9 *Developer Class and Attorneys for Plaintiff*
10 *Peekya App Services, Inc.*

11 Dated: July 9, 2021

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18 Respectfully submitted,

19 By: /s/ Daniel M. Petrocelli
20 Daniel M. Petrocelli

21 *Counsel for Defendants Google LLC et al.*
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E-FILING ATTESTATION

I, Daniel M. Petrocelli, am the ECF User whose ID and password are being used to file this document. In compliance with Civil Local Rule 5-1(i)(3), I hereby attest that each of the signatories identified above has concurred in this filing.

/s/ Daniel M. Petrocelli

Daniel M. Petrocelli

*** * ***

1 **PURSUANT TO STIPULATION, IT IS SO ORDERED**

2
3 DATED: July 15, 2021

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HON. JAMES DONATO

5 United States District Court Judge
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